Frank J. Warn, Inc. d/b/a Crescent Truck Lines *and* Machinists Automotive Trades District Lodge No. 190 of Northern California, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 32–CA–14913

February 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed by the Union on August 11, 1995, the General Counsel of the National Labor Relations Board issued an amended complaint on November 20, 1995, against Frank J. Warn, Inc. d/b/a Crescent Truck Lines, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, complaint, and amended complaint, the Respondent failed to file an answer.

On January 29, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On January 31, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the amended complaint shall be deemed admitted if an answer is not filed within 14 days from service of the amended complaint, unless good cause is shown. In addition, the amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended complaint will be considered admitted.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation with an office and place of business in Hayward, California, has been engaged in the intrastate and interstate transportation of goods and materials. During the 12-month period preceding issuance of the amended complaint, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 directly to customers located outside the State of California, and provided services valued in excess of $50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees performing work described in and covered by Sections 1 and 1.01 of the September 1, 1991 through August 31, 1994 collective bargaining agreement between the Union and the Respondent (the 1991–1994 agreement); excluding all other employees, guards, and supervisors as defined in the Act.

Since at least 1976, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that time, the Union has been recognized as such representative by the Respondent, except as alleged to the contrary below. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the 1991–1994 agreement. At all times since 1976, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Commencing about April 4, 1995, the Respondent and the Union met for the purpose of negotiating a successor collective-bargaining agreement (successor agreement) to the 1991–1994 agreement. About April 4, 1995, the Union orally requested that the Respondent provide it with information relating to the Re-

spondent's extant profit-sharing plan for unit employees, including information relating to the Respondent's profits going back to 1991. This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since April 4, 1995, the Respondent has failed and refused to provide the Union with the requested information.

Since about June 12, 1995, the Union has requested the Respondent to continue to meet and bargain with it for the purposes of negotiating a successor agreement, and since that date the Respondent has failed and refused to do so.

The 1991–1994 agreement provides, inter alia, that all unit employees make a mandatory contribution to the Respondent's profit-sharing plan (the plan), at the same rate and on the same basis as the Respondent's employees represented by the International Brotherhood of Teamsters, AFL–CIO. About mid-January 1995, the Respondent, pursuant to an agreement with the Teamsters, discontinued mandatory employee contributions to the plan. At all times since mid-January 1995, the Respondent has deducted plan contributions from the pay of unit employees at the pre-mid-January 1995 rate, instead of discontinuing such deductions. The Respondent engaged in these actions without notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive collective-bargaining representative of the unit employees with respect to such acts and the effects. The Union did not become aware of the Respondent's acts until about April 5, 1995.

CONCLUSION OF LAW

By failing and refusing to provide the Union with the requested information, by failing and refusing to meet and bargain with the Union for the purposes of negotiating a successor agreement, and by deducting plan contributions from the pay of unit employees at the pre-mid-January 1995 rate after mid-January 1995, instead of discontinuing such deductions, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union the requested information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

Furthermore, having found that the Respondent has failed and refused to meet and bargain with the Union for the purposes of negotiating a successor agreement, we shall order the Respondent to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

Finally, having found that the Respondent, since mid-January 1995, has unilaterally failed to discontinue plan deductions from the pay of unit employees, we shall order the Respondent to discontinue the mandatory deductions and to make the unit employees whole by refunding to the unit employees the amounts that have been unlawfully deducted, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Frank J. Warn, Inc. d/b/a Crescent Truck Lines, Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to provide the Machinists Automotive Trades District Lodge No. 190 of Northern California, International Association of Machinists and Aerospace Workers, AFL–CIO with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(b) Failing or refusing to meet and bargain with the Union for the purposes of negotiating a collective-bargaining agreement.

(c) Unilaterally failing, since mid-January 1995, to discontinue mandatory contributions from the pay of unit employees to the Respondent's profit-sharing plan.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information it requested on April 4, 1995.

(b) On request, bargain with the Union as the exclusive representative of the employees in the following unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees performing work described in and covered by Sections 1 and 1.01 of the September 1, 1991 through August 31, 1994 collective bargaining agreement between the Union and the Respondent; excluding

all other employees, guards, and supervisors as defined in the Act.

(c) Discontinue mandatory deductions from the pay of the unit employees to the Respondent's profit-sharing plan, and make the unit employees whole, with interest, for those deductions that have been made since mid-January 1995, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Hayward, California, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 29, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to provide the Machinists Automotive Trades District Lodge No. 190 of Northern California, International Association of Machinists and Aerospace Workers, AFL–CIO with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail or refuse to meet and bargain with the Union for the purposes of negotiating a collective-bargaining agreement.

WE WILL NOT unilaterally fail to discontinue mandatory deductions from the pay of unit employees for our profit-sharing plan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the information it requested April 4, 1995.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time employees performing work described in and covered by Sections 1 and 1.01 of the September 1, 1991 through August 31, 1994 collective bargaining agreement between the Union and us; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL discontinue the deductions from the pay of the unit employees for our profit-sharing plan, and WE WILL make the unit employees whole for these amounts that have been deducted since mid-January 1995, with interest.

FRANK J. WARN, INC. D/B/A CRESCENT TRUCK LINES